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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 09/788,545
Filing Date: February 21, 2001
Appellant(s): ORR ET AL.

Gregory Scott Smith
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed May 28, 2009 appealing from the Office action mailed November 25, 2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

7,047,485

Klein et al

5-2006

"Official Notice"

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

2. Claims 1, 2, 7-8, 11, 12, 15, 17-18, and 21 rejected under 35 U.S.C. 102(e) as being anticipated by Klein et al (US Patent No. 7,047,485).
3. As per claim 1, Klein et al teach a system for enhancing perceived throughput between a client and a server, said system comprising:

a predictive server in association with said server wherein said predictive server comprises a server analyzer unit and a server storage unit (**column 6, lines 10-20, fig 1: web Agent 116 running on web server 112**);

a client agent in association with the client, wherein the client agent comprises an agent analyzer unit and an agent storage unit (**column 6, lines 64-67, fig 1; Applet 124 running on client 104**);

wherein the predictive server analyzes, at the predictive server analyzer unit, a first response to request for a web page (**column 5, lines 28-38**), and accordingly generates at the predictive server storage unit a predictive list of requests for objects, which are needed for presenting the requested web page, (**column 6, lines 10-29**); and wherein the predictive server further issues predictive requests to the server, receiving from the server predictive responses

from the server (**column 6, lines 24-36; requests for web objects in object list are made to web server 112 which can then obtain the requested object from application server 114, see column 5, lines 35-38**); and

wherein the client agent receives with the agent analyzer unit of the client agent via the predictive server said first response (**column 5, lines 28-38**), analyzes the first response (**column 6, lines 34-67**); automatically forwards said first response to the client (**column 6, lines 28-36**), receives from the client a request for an object contained in first response and is needed for presenting the requested web page (**column 7, lines 1-37**), compares the request for said object with the already received predicted responses, wherein when an already received corresponding predicted response exists the existing predicted response is forwarded to the client (**column 5, lines 39-45, column 3, lines 43-49**).

4. As per claim 2, Klein et al teach wherein the client agent is compares the request against an agent's predictive list which is generated based on the client agent analyzing the first response and if no entry for that request for an object is found, the request is forwarded towards the server (**column 6, lines 10-53; in pre-caching, the cache is first checked to see if the object requested is available prior to sending the request to the server**).

5. As per claim 7, Klein et al teach wherein said client agent receives requests from said client and forwards the requests to said predictive unit using encapsulation (**column 4, lines 15-28; request sent in web pages**).

6. As per claim 8, Klein et al teach wherein data transmitted between said client agent and said predictive server undergoes a data processing step selected from a group consisting of data compression, partial information transfers, protocol conversion, and data packet combining (**column 3, lines 59-63**).

7. As per claim 21, Klein et al teach wherein said client agent is further capable of issuing a re-load command (**column 4, lines 15-27; web browser feature**).
8. As per claims 11, 12, 15, 17-18, these claims contain similar limitations as claims 1, 2, 7, 8, and 21 above and are therefore rejected under the same rationale.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claims 9 and 19 is rejected under 35 U.S.C. 103(a) as being unpatentable over Klein et al in view of "Official Notice".
11. As per claim 9, Klein et al fail to teach *wherein the client agent is adapted to transmit a fake response to a client before a real response from said server has been received*. However, "Official Notice" is taken that the concept and advantage of sending a "fake" response before a real response is well known in the art since web pages contain objects, such as images or text, which may take longer to download than other objects. Therefore, it would have been obvious to one of ordinary skill in the art at the time of the Applicant's invention to include such a feature in Klein et al because doing so would allow for a partial response or "fake" response to be sent to the requesting user while the server continues to download all objects of the requested page.
12. Claim 19 contains similar limitations as claim 9 above and is therefore rejected under the same rationale.

13. The Applicant has not adequately traversed the Official Notice taken in the previous action. “ *To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner’s action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art.*” MPEP 2144.03c. **The common knowledge or well-known in the art statement is taken to be admitted prior art because the traverse was inadequate. MPEP 2144.03c**

(10) Response to Argument

Argument A: *Klein is focused on a web page to web page transition level, whereas the claimed invention is focused on a single web page request level, not web page to web page transitions.*

In response to applicant’s argument that the references fail to show certain features of applicant’s invention, it is noted that the features upon which applicant relies (i.e., *a single web page request level, not web page to web page transitions.*) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The metes and bounds of the claimed invention is measured by the language in the claims. The prior art of record teaches the invention as recited in the rejected claims and therefore meets the scope of the claimed invention.

Argument B: *Klein does not receive a response from the server. Klein does not forward any responses.*

In response, the Examiner respectfully disagrees. Klein et al teach web server 112 will have returned to it a resultant web page (**see at least column 5, lines 39-45**) based on a user

request (**see at least column 5, line 31**) and will then forward the web page to the web browser (**see at least column 5, lines 65-67**).

Argument C: *The web agent 116 is not operating as the claimed predictive server; the web server 116 is never described as receiving a first response from the server in response to the server acting on a request for a web page.*

In response, the Examiner respectfully disagrees. Klein et al teach web agent 116 is part of web server 112 (**see at least column 5, lines 22-27**). Web server 112 can receive a resultant web page based on the user request from Application server 114 (**see at least column 5, lines 32, 39-41, 59**).

Argument D: *Klein does not teach generating at the predictive server storage unit a predictive list of requests for objects, which are needed for presenting the requested web page, based on an analysis of information contained within said stored first response",*

In response, the Examiner respectfully disagrees. Klein et al teach statistical information is received from Web Agent 116, that relates to which web page is most often accessed directly after the current web page being viewed at this moment in Web Browser 110. The web page most likely to be accessed next, Web Agent 116 provides an Object List 126, to Java Applet 124 of Web Page Objects 128 that is ordered in statistical significance (high to low). Objects 128 can be graphics, applets or other web page content. Java Applet 124 makes a request for that Web Object 128 over network 102. Web Server 112 services this request and delivers to Java Applet 124, over network path 102, the requested Web Object 128. Java Applet 124 copies Web Object 128 into Web Browser Cache 130 where it will reside and be made available to Web Browser 110 on subsequent Web Browser 110 transactions. Thus, Web Object 128 is

made available before actually needed by Web Browser 110. **(See at least column 6, lines 10-36)** Therefore Klein et al meet the claimed limitation.

Klein et al also teaches that Applet 124 can generate an object list of web pages or web objects that are possible next web pages and can then send an instruction to web server 112 to obtain these next web pages. The web pages are then sent to the Applet and are cached where they reside till they are needed **(see at least column 6, line 64-column 7, line 37)**.

Argument E: *Klein does not issue predictive requests to the server and does not received predictive responses.*

In response, the Examiner respectfully disagrees. Klein et al teach that requests are made for objects or web pages prior to being requested and are then stored in the browser cache and made available to the user prior to actually needing those pages **(see column 6, lines 10-35, column 7, lines 5-37)**.

Argument F: *the object list used by Klein is created based on statistical method and not by parsing a received a first response to a request for a web page.*

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., parsing a received a first response to a request for a web page) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993). The claim teaches that a predictive list of objects is generated and does not mention how that list is generated. Klein et al teaches that the list can be generated based on statistical significance and without statistical significance (all objects will be pre-cached regardless) **(see at least column 2, line 39-column 3, line 5, column 6, line 10-column 7, line 37)**.

Argument G: *the elements of "wherein said client agent is further capable of issuing a re-load command" is not taught.*

In response, the Examiner respectfully disagrees. The Appellant is arguing that the reload *"enables the invention to operate with a client agent only" and "when the first response to the initial request is received from the server by the client agent and it is stripped of all information other than page formatting and the list of objects need to be retrieved for the requested page, with a command to re-load all the objects for the requested web page when they are received. This re-load is executed by the client once the objects are received".* However, these limitations are not recited in the rejected claims. The claim merely recites *"wherein said client agent is further **capable of** issuing a re-load command".* The claim does not recite any of the argued limitations. It merely states that the client agent is *capable of* issuing a reload command.

Argument H: *"the Examiner's position of official notice is not warranted in that there is absolutely no support provided by the Examiner of a client agent the transmits a fake response to a client before a real response from the server has been received"*

In response, the Examiner asserts the Appellant never adequately traversed the Official Notice taken in the previous actions. *" To adequately traverse such a finding, an applicant must specifically point out the supposed errors in the examiner's action, which would include stating why the noticed fact is not considered to be common knowledge or well-known in the art."*
MPEP 2144.03c. **The common knowledge or well-known in the art statement is taken to be admitted prior art because the traverse was inadequate. MPEP 2144.03c**

Regarding the system claims :

The claims directed to an apparatus must be distinguished from the prior art in terms of **structure rather than function**, In re Danly, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). A claim containing a "recitation with respect to the manner in which a claimed apparatus is intended to be employed does not differentiate the claimed apparatus from a prior art apparatus" if the prior art apparatus teaches all the structural limitations of the claim. Ex parte Masham, 2 USPQ2d 1647 (Bd Pat. App & Inter. 1987). Thus, the functional limitations in claim 1-2, 7-9, and 21 do not distinguish the claimed apparatus from the prior art.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Ramsey Refai/

Primary Examiner, Art Unit 3627

Conferees:

/F. Ryan Zeender/

Supervisory Patent Examiner, Art Unit 3627

Vincent Millin /vm/
Appeals Practice Specialist